Supreme Court, U.S.
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No. 97-158

In The

Supreme Court of the United States

October Term, 1996

BARBARA F. GREEN and STANLEY R. GREEN,

Petitioners,

vs.

THE TOWN OF BROOKLINE, MASSACHUSETTS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the judgment of the United States Court of Appeals for the First Circuit affirming an Order of the Massachusetts District Court dismissing the petitioner's complaint was proper.

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STATEMENT OF THE CASE

In 1996, the petitioners, Mr. and Mrs. Green (hereinafter, the "Greens"), filed a complaint at the Massachusetts District Court alleging that the respondent, the town of Brookline, Massachusetts (hereinafter, "Brookline") wrongfully terminated Mrs. Green from her employment in 1987. Brookline moved to dismiss the complaint on the ground that the petitioners' complaint was time-barred. After a hearing, the District Court entered an Order of Dismissal. *Petition, App. 1 at 25.*

The Greens subsequently petitioned the United States Court of Appeals for the First Circuit to review the Order of Dismissal. In support of their petition, the Greens raised two issues. First, they asserted that the Order dismissing their complaint was proper if their claims were barred by the exclusivity provision of the Massachusetts Workers' Compensation Act; second, they argued that the statute of limitations should be set aside on the ground that Mrs. Green was wrongfully coerced into voluntarily dismissing her appeal of a Massachusetts Civil Service Commission decision affirming Brookline's termination of her employment in violation of her Constitutional Rights.

On April 17, 1997, the United States Court of Appeals for the First Circuit affirmed the District Court's Order of Dismissal on the grounds that the Greens' complaint was time-barred and because it failed to allege compliance with the Title VII filing requirements. *Petition, App. 1 at 21.* The Greens seek this Court's review of the judgment of the United States Court of Appeals.

The Facts.

The town of Brookline hired Mrs. Green as a civil service, Junior Clerk Typist in Brookline's Department of Veterans' Services in July, 1978. After a course of progressive disciplinary action, Mrs. Green was terminated from her employment in 1987. Mrs. Green appealed Brookline's decision to terminate her at the Massachusetts Civil Service Commission, the state administrative agency that is charged with reviewing such decisions. The Civil Service Commission upheld Brookline's decision to terminate Mrs. Green.

In 1989, the Greens filed a workers' compensation claim at the Massachusetts Department of Industrial Accidents, the state administrative agency that is charged with reviewing such claims. By their claim, which was brought under the provisions of Massachusetts General Law Chapter 152, the so called Massachusetts Workers Compensation Act, the Greens alleged that Mrs. Green was disabled from work as a result of the events leading up to and including her termination from work in 1987. In April, 1996, the Department of Industrial Accidents issued a decision and Order, finding that Mrs. Green was disabled from work from January 27, 1987 through December 16, 1991. Brookline's appeal of the decision and Order is pending before the Massachusetts Department of Industrial Accidents.

In June, 1996, the Greens filed a forty-seven page complaint[1] at the Massachusetts District Court alleging

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[1] Prior to filing their 1996 complaint, the Greens filed a number of earlier claims alleging that Mrs. Green was

that Brookline discriminated and retaliated against Mrs. Green during her employment in Brookline; that Brookline wrongfully terminated Mrs. Green from her employment; that Brookline's attorneys wrongfully withheld and/or used certain evidence against Mrs. Green during the course of the proceedings before the Massachusetts Department of Industrial Accidents; and that Mr. Green suffered a loss of consortium in his marriage on account of Brookline's allegedly wrongful conduct in connection with such evidence.

REASONS FOR DENYING THE WRIT

It is undisputed that Mrs. Green was terminated from her Brookline employment in 1987. The petitioners' 1996 complaint was brought some nine years later, and,

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wrongfully terminated from her Brookline employment. In 1987, they filed a complaint at the Massachusetts Commission Against Discrimination alleging that Mrs. Green was discriminated against in her employment; in 1987, they filed a complaint at the District Court Department of the Massachusetts Trial Court seeking review of the decision of the Massachusetts Civil Service Commission upholding Brookline's termination of Mrs. Green from her employment; in 1988, they filed a complaint at the Massachusetts District Court seeking review of the decision of the Massachusetts Civil Service Commission upholding Brookline's decision to terminate Mrs. Green from her employment; and, in 1991, the Greens filed a complaint at the Massachusetts District Court seeking review of Brookline's decision to terminate Mrs. Green from her employment and of the Massachusetts Civil Service Commission's decision upholding such termination. All of these claims were either unsubstantiated, or dismissed.

because it was time-barred, it was properly dismissed. The judgment of the United States Court of Appeals affirming the dismissal was plainly correct.

A distillation of the Greens' petition, however, reveals what appears to be at the bottom of the petitioners' argument in support of review: they suggest that the statute of limitations for their employment discrimination claims that are not covered by the Massachusetts Workers' Compensation Act should be tolled until the date upon which the decision and Order of the Department of Industrial Accidents was issued. If this argument is properly taken, it is without merit. "The pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the limitations period." *Ombe v. Fernandez*, 914 F. Supp. 782, 788 (1st Cir. 1996), *citing Electrical Workers v. Robbins & Meyers, Inc.*, 429 U.S. 229, 97 S. Ct. 441, 50 L. Ed. 2d 427 (1976).

Moreover, even if the petitioners were to argue that they were unable to meet the filing deadline because of Mrs. Green's disability from work, this argument also fails, as the presently unresolved decision and Order of the Massachusetts Department of Industrial Accidents determined that Mrs. Green's disability from work terminated in December, 1991, some five years before the Greens filed their 1996 District Court complaint.

Finally, contrary to the Greens' assertion, the judgment of the United States Court of Appeals for the First Circuit is not in conflict with a decision of any other court of last resort. "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition . . . will be granted only for compelling reasons." *Sup. Ct.*

R.10. In the instant case, even the most liberal interpretation of the petition fails to point to any such compelling reason. Simply stated, the gate has been shut, and there is no reason to re-enter the garden.

CONCLUSION

For the foregoing reasons, the respondent town of Brookline respectfully states that the Petition for Writ of Certiorari should be *Denied*.

Respectfully submitted,

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Dated: August 27, 1997.